REMARKS

Claims 1-28 are pending in the present application and stand rejected. Claims 1, 3, 4, 6, 7, 9, 12, 14, 15, 16, 18-22, and 25-28 have been amended. Claim 5 has been cancelled. Examiner's reconsideration of the claim rejections is respectfully requested in view of the following remarks.

Claim Rejection under 35 U.S.C. § 112

Claims 1-7, 9, 10 and 12-28 stand rejected under 35 U.S.C. § 112, second paragraph, for the reasons set forth on pages 4-5 of the Final Office Action. Claims 1, 3, 4, 6, 9, 12, 15, 16, 18, 20, 22, and 25-28 have been amended to address the Examiner's 112, second paragraph rejections. Accordingly, withdrawal of the rejection under 35 U.S.C. § 112, second paragraph, is respectfully requested.

Claim rejection under 35 U.S.C. § 102

Claims 4 and 5 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Connor (U.S. Pub. No. 2003/0061426). Claim 5 has been cancelled. Claim 4 has been amended to recite *inter alia*, "wherein the packet delay time is a time interval between received data frames and excludes times of the data frames." Connor teaches (in paragraph 26) a time interval which includes the data frames. This is evidenced by a portion of paragraph 26 which states *"the first threshold corresponds to a time period greater than a minimum inter-frame gap (IFG) but that is less than the sum of a minimum IFG and a packet time"*.

Accordingly, claim 4 is not anticipated by Connor, and withdrawal of the rejection under 35 U.S.C. § 102 is respectfully requested.

Claim rejection under 35 U.S.C. § 103

Claims 12-14 stand rejected under 35 U.S.C. § 103(a) as being obvious over Connor, in view of Satran et al. (U.S. Pub. No. 2002/0029305) (hereinafter "Satran"), Gentry Jr. et al. (U.S. Patent No. 6,467,008) (hereinafter "Gentry"), and Bennett et al. (U.S. Patent No. 6,345,302) (hereinafter "Bennett").

Claims 1-3 stand rejected under 35 U.S.C. § 103(a) as being obvious over Connor, in view of Gentry.

Claims 6-7 stand rejected under 35 U.S.C. § 103(a) as being obvious over Connor, in view of Gentry, and Satran.

Claim 8 stands rejected under 35 U.S.C. § 103(a) as being obvious over Connor, in view of Satran.

Claims 9-10 stand rejected under 35 U.S.C. § 103(a) as being obvious over Connor, in view of Gentry and Bennett.

Claim 11 stands rejected under 35 U.S.C. § 103(a) as being obvious over Connor, in view of Bennett.

Claims 15-28 stand rejected under the same arguments provided for claims 1-3, 6, 7, 9, 10 and 12-14.

With respect to claim 12, it is submitted that the combination of Connor, Satran, Gentry, and Bennett does not disclose or suggest the use of *"determining whether the type field of the received data frames is identical to a predetermined type field"*, as recited *inter alia* in claims 12, 6, and 8.

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The Examiner acknowledges that neither Connor nor Gentry *"teach explicitly determining a type field"*. The Examiner contends that Satran teaches (in paragraph 35, 36, figure 3) *"determining whether the type field of the received data frames is identical to a predetermined type field. "* The Examiner also notes that the "end-of-data flag in the header is the type field." However, it is respectfully submitted that Examiner's characterization of the teachings of Satran in this regard is misplaced. At the time of the invention, it was well known in the art that a "type field" in an Ethernet frame represents the protocol type of a packet. Clearly an "end-of-data flag", which indicates the end of data is not the same as a type field which represents the protocol of a packet.

Accordingly, claim 12 is believed to be patentably distinguishable over the combination Connor, Satran , Gentry, and Bennett. Since claims 6 and 8 also recite *"determining whether the type field of the received data frames is identical to a predetermined type field"*, the arguments provided above for claim 12, additionally apply to claims 6 and 8. Moreover, claims 13-14 are patentable at least by virtue of their dependence from claim 12, and claim 7 is patentable at least by virtue of its dependence from claim 6.

With respect to claim 1, it is submitted that the combination of Connor and Gentry. does not disclose or suggest the use of *"counting the number of data frames if the first time delay has not passed"*, as recited *inter alia* in claims 1.

The Examiner acknowledges that Connor does not *"teach explicitly counting a number of data frames"*, but states that Gentry teaches (in figure 1) *"counting a number of data frames"* with a packet counter. However, the combined teachings of Connor and Gentry do not disclose counting a number of data frames if a time delay has not passed.

The Examiner further states that it would have been obvious to *"combine Connor's invention with Gentry's teachings by adding the packet counting circuits into the network interface in the system disclosed by Connor for the benefit of further reducing* [the] *number of interrupts without preventing packets from being processed in a timely manner."*

he Examiner seems to be using the benefit of hindsight reasoning to combine the references in a specific way to meet the Examiner's needs. This is entirely improper as the Examiner still does not expressly establish that the specific combination was known at the time of the prior art. The Examiner is, at best, making an educated *guess* as to what was known.

Accordingly, claim 1 is believed to be patentably distinguishable over the combination Connor and Gentry. Moreover, claim 2-5 are patentable at least by virtue of their dependence from claim 1.

With respect to claim 9, it is submitted that the combination of Connor, Gentry, Satran and Bennett does not disclose, *"determining whether the protocol field is identical to a predetermined protocol field if the number of received data frames is not equal to N"*, as recited *inter alia* in claim 9.

The Examiner acknowledges that *"Connor, Gentry, and Satran combined does not disclose explicitly determining the protocol field"*, but that Bennett teaches (in col. 14, lines 25-30) *"determining whether the protocol field of the received data frames is identical to a predetermined protocol field"*. Assuming, *arguendo*, that Bennett teaches *"determining whether the protocol field of the received data frames is identical to a predetermined protocol field"*, Bennett still does not teach determining a protocol field *"if*

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the number of received data frames is not equal to N". In fact, column 14, lines 15-18 of Bennett states that the *"[i]f the total datagram length does not match the number of transfers, then protocol logic determines if the defragmented datagram is a TCP segment field by checking the protocol field."* Here, the protocol field is checked if the total datagram length does not match the number of transfers and not if the number of received data frames is not equal to N.

Accordingly, claim 9 is believed to be patentably distinguishable over the combination Connor, Gentry, and Bennett. Moreover, claim 10 is patentable at least by virtue of its dependence from claim 9.

With respect to claim 11, it is submitted that combined teachings of Connor and Bennett do not render the claimed subject matter obvious. The Examiner has stated that claim 11 is rejected because it contains a subset of the elements found in claim 12. However the scope of claim 11 is different from that of claim 12.

Accordingly, claim 11 is believed to be patentably distinguishable over the combination of Connor and Bennett.

With respect to claims 15, 18, 20, 22 and 25, it is submitted the combination of Connor, Gentry, Satran, and Bennett, do not disclose a *"time delay determining circuit"* as recited inter alia in claims 15, 18, 20, 22, and 25. The Examiner states that claims "15-28 differ from claims 1-3, 6, 7, 9, 10, and 12-14 only in statutory category", and are rejected summarily for the same reasons as claims 1-3, 6, 7, 9, 10, and 12-14. However, it is respectfully reminded that the Examiner has the burden to establish a *prima facie* case of obviousness. Applicants respectfully submit that the references, neither individually teach

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"*a time delay determining circuit*", nor in combination, render obvious a "*a time delay determining circuit*", as recited *inter alia* in claims 15, 18, 20, 22, 25.

Accordingly, claims 15, 18, 20, 22, and 25 are believed to be patentably distinguishable over the combination of Connor, Gentry, Satran, and Bennett. Moreover, claims 16-17 are patentable at least by virtue of their dependence from claim 15, claim 19 is patentable at least by virtue of its dependence from claim 18, claim 21 is patentable at least by virtue of its dependence from claim 20, claims 23-24 are patentable at least by virtue of their dependence from claim 22, and claims 26-28 are patentable at least by virtue of their dependence from claim 25.

In view of the foregoing remarks, it is respectfully submitted that all the claims now pending in the application are in condition for allowance. Early and favorable reconsideration is respectfully requested.

Respectfully submitted,

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